

Honorable Leif B. Erickson
Federal Magistrate Judge
Missoula Division
Russell E. Smith Courthouse
201 East Broadway, Room 370
Missoula, MT 59802

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

GINGER HAGEMAN,
KENT WOOD, and
CHRISTINE WOOD,

CAUSE NO. CV 06-45-M-LBE

Plaintiffs,

FINDINGS AND
RECOMMENDATION

vs.

OF U.S. MAGISTRATE JUDGE

RICHARD GEBHARDT, Plains City Attorney;
CHIEF SHAWN EMMETT, Plains Police Dept.;
ERNEST CAHALA, Plains Police Officer;
JOE BROWN, County Coroner;
LAURIE SHARP, Deputy Coroner;
ROBERT ZIMMERMAN, Sanders County Attorney; and
GENE ARNOLD, Sanders County Sheriff,

Defendants.

Plaintiffs have filed a Renewed Motion For Entry of Judgment. For the second time Plaintiffs argue Defendants have not timely filed their answers and, therefore, are in default. Plaintiffs also argue that any answer that Defendants have since filed is incomplete because it answers the Complaint only in Defendants' official capacities, yet Defendants are also sued in their individual capacities. They believe the answer is not filed in Defendants' individual capacities because it is filed through attorneys employed by insurance companies which represent the County and the City.

FINDINGS AND RECOMMENDATION
OF U.S. MAGISTRATE JUDGE - PAGE 1

First, for the reasons stated in the Court's May 22, 2006 Findings and Recommendation Defendants are not in default and the entry of default cannot be made.

Second, the fact that Defendants are represented by attorneys employed by an insurance company for the County and City does not mean that the answer filed in this case is filed only in Defendants' official capacities. To the contrary, upon review of the Answer of Defendants Brown, Sharp, Zimmerman, and Arnold the Court finds it is not limited to only their official capacities. The Court finds their answer responds to all aspects of the Complaint, both official and individual capacity claims.

The Court hereby enters the following:

RECOMMENDATION

Plaintiffs' Renewed Motion for Entry of Judgment should be **DENIED**.

NOW, THEREFORE, IT IS ORDERED that the Clerk shall serve a copy of the Findings and Recommendation of the United States Magistrate Judge upon the parties. The parties are advised that pursuant to 28 U.S.C. § 636, any objections to these findings must be filed with the Clerk of Court and copies served on opposing counsel within ten (10) days after receipt hereof, or objection is waived.

DONE and DATED this 6th day of June, 2006.

/s/ Leif B. Erickson
Leif B. Erickson
United States Magistrate Judge